

**United States Department of Labor
Employees' Compensation Appeals Board**

L.M., Appellant

and

**U.S. POSTAL SERVICE, CENTRAL GARAGE
FACILITY, Chicago, IL, Employer**

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**Docket No. 13-992
Issued: July 26, 2013**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2013 appellant, through his attorney, filed a timely appeal from the January 31, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for continuing compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to continuing compensation benefits for an accepted medical condition after August 15, 2011, the date OWCP terminated compensation for medical benefits and wage loss.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 29, 2006 appellant, a 48-year-old tractor-trailer operator, sustained a traumatic injury in the performance of duty when he tried to pull up the door on the back of his truck. OWCP accepted his claim for lumbar sprain, sprain of the lumbosacral joint and a herniated nucleus pulposus at L4-5.

In a decision dated August 15, 2011, OWCP terminated appellant's compensation for medical benefits and wage loss effective that day. It found that the weight of the medical opinion evidence rested with the opinion of Dr. Robert K. Ellis, a Board-certified orthopedic surgeon and impartial medical specialist,² who found that the accepted medical conditions had resolved and that appellant no longer required medical treatment.

An OWCP hearing representative reviewed the termination and affirmed the August 15, 2011 decision. In a decision dated February 15, 2012, the hearing representative found that the weight of the medical opinion evidence rested with Dr. Ellis and established that appellant had recovered from his July 29, 2006 work injury. Dr. Ellis explained that appellant had evidence of degenerative lumbar disc disease with bulging discs predating his employment with the postal service. He stated that the July 29, 2006 work injury temporarily aggravated the symptoms arising from the preexisting degenerative lumbar disc disease and preexisting herniated lumbar disc, but on physical examination appellant demonstrated no evidence that would indicate an active residual of the July 29, 2006 work injury. The hearing representative found that Dr. Ellis was the only physician of record who offered an opinion based on a complete factual and medical background. The hearing representative further found that Dr. Ellis offered convincing rationale to support that the temporary aggravation caused by the July 29, 2006 work injury had ceased.

Appellant, through his representative, requested reconsideration by OWCP. He submitted a magnetic resonance imaging (MRI) scan of the lumbar spine obtained on February 14, 2012 and a February 20, 2012 progress note from Dr. Marc A. Levin, appellant's Board-certified neurosurgeon. The MRI scan showed postoperative changes at L4-5 and L5-S1, as well as multilevel degenerative changes, with no significant interval changes since the prior study on April 29, 2010.

Dr. Levin reviewed the MRI scan and noted that appellant had multilevel disc disease, worse at L4 where he previously had surgery. He advised appellant that multilevel fusion was not recommended.

By decision dated January 31, 2013, OWCP reviewed the merits of appellant's case. It found that the additional medical evidence failed to provide any opinion regarding appellant's current condition or level of disability and its relationship, if any, to the July 29, 2006 work

² OWCP had selected Dr. Ellis to resolve a conflict between Dr. Barnard D.C. San Gabriel, the attending Board-certified internist, and Dr. Anthony L. Brown, a Board-certified orthopedic surgeon and second-opinion physician, on the extent of appellant's work-related injury and the physical limitations or restrictions imposed by residuals of that injury.

injury. As the evidence did not contradict Dr. Ellis' opinion, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

When OWCP meets its burden of proof to justify the termination of a claimant's compensation benefits, the burden shifts to the claimant to establish that any subsequent medical condition or attendant disability is causally related to the accepted employment injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established work incident.⁵

ANALYSIS

OWCP terminated appellant's compensation on August 15, 2011 on the grounds that the special weight of the medical opinion evidence was represented by the opinion of Dr. Ellis, the Board-certified orthopedic surgeon and impartial medical specialist, who determined that appellant had recovered from the accepted medical conditions. Dr. Ellis noted that the July 29, 2006 work injury temporarily aggravated the preexisting degenerative lumbar disc disease and preexisting herniated lumbar disc, which ceased without objective evidence of residuals.⁶

Appellant sought review by an OWCP hearing representative. In a February 15, 2012 decision, the hearing representative affirmed the termination of his compensation. OWCP having met its burden of proof to justify the termination of appellant's compensation benefits, the burden shifted to appellant to establish that any medical condition or attendant disability after August 15, 2011 was causally related to the July 29, 2006 employment injury.

Appellant requested reconsideration and submitted additional medical evidence, but this evidence did not address whether he still suffered active residuals or disability causally related to the July 29, 2006 employment injury. Dr. Levin, the attending neurosurgeon, did not review or

³ *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a medical condition causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

address the reports of the impartial medical specialist, Dr. Ellis. He offered no opinion to support that appellant has continuing residuals or disability as a result of the July 29, 2006 injury.

The Board finds that appellant has not met his burden of proof to establish that he is entitled to compensation for the accepted medical conditions after August 15, 2011. Accordingly, the Board will affirm OWCP's January 31, 2013 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he is entitled to continuing compensation benefits for an accepted medical condition after August 15, 2011, the date OWCP terminated compensation for medical benefits and wage loss.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board